

## Proceedings

1  
2 is looking for, I would suggest, your Honor,  
3 that something south of 10, and certainly  
4 something in the 7 or 8 year neighborhood is  
5 what we would be looking for.

6 Obviously, if your Honor had changed  
7 your mind and was thinking of a sentence  
8 further south on the totem pole than that,  
9 then I certainly would welcome that.

10 THE COURT: You would not object.

11 MR. ROSS: Right. But that's from us,  
12 under the circumstances, what we would be  
13 looking for.

14 THE COURT: Let me hear from  
15 Mr. Bogdanos, just to get his position. I  
16 don't think it's ever been placed on the  
17 record as to this issue.

18 MR. BOGDANOS: Certainly.

19 There are two or three, indeed,  
20 overriding factors:

21 One, this is not the defendant's first  
22 brush with the law, we are clear with that.  
23 Your Honor can read the RAP sheet just like I  
24 can, so let me move on to the incident at  
25 level.

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What we have in the truest sense of the word, indeed, the paradigmatic sense of the word is an unprovoked attack. What Mr. Greene did was brush up against Dominick Florio in a crowded club, and Mr. Florio flew into a rage. There's no other way to describe what he did to him; took a Champagne bottle and smashed Mr. Greene from behind on the head.

While, clearly, based on the defendant's statements later on, and the defendant's family's statements later on, there appears to be some racial bias aspect to it, it's not an argument that the People plan on making in front of the jury, and it is not a strong enough argument that the People rest our entire argument on, or would, in any way, suggest that the sentence should be increased because of that. But it comes back at you, looking at the incident here, all of the circumstances as they will unfold before your Honor, it comes back again and again that the color of Mr. Greene's skin had something to do with the attack, or with the rage into which Mr. Florio flew, so that as

Denise M. Huntington, RPR, CSR  
Senior Court Reporter

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1  
2 it may.

3 And even putting that aside, what you  
4 are left with is an unprovoked attack in  
5 which George Green's life has changed  
6 forever. Forever. Sure, he can go to work  
7 and he can function on a decent level, but he  
8 can't do all the things he did before that  
9 day. He can't do any of those things anymore.  
10 He can't ever engage in any kind of strenuous  
11 sports activity without the fear that  
12 something is going to happen to him; he is  
13 going to have a seizure. His life has  
14 changed forever.

15 Months ago, when this case was indicted,  
16 and I first presented this case in Part 70  
17 for arraignment, my note to that Assistant  
18 indicated that the People are recommending  
19 20 years. I have seen nothing over the course  
20 of the last 6 months to change that number,  
21 so it remains the People's position that for  
22 what he did on that day, Dominick Florio  
23 should receive a sentence of 20 years.

24 It's still less than forever.

25 THE COURT: IN OTHER WORDS, AFTER

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trial, or whether it is after trial or on the plea?

MR. BOGDANOS: Right, there's no punishment for trial. He should go away for 20 years, six-sevenths of 20 years.

He's still better off than George Green.

THE COURT: That is your position?

MR. BOGDANOS: Yes, sir.

THE COURT: Anything further, counsel?

MR. ROSS: Judge, with respect to the notion that there's any significant racial bias at work here, I just don't think that Mr. Bogdanos has anything that would indicate at the time that this happened, all of the good faith bases that he would have, that he may urge your Honor, if he actually tries this case, to be permitted to ask Mr. Florio about, if he were to take the stand in his own defense, come up after the fact.

It's true that the complainant's skin color is that of an African American and that my client is Caucasian, but in the bar, itself, there were no racial comments. There were no indications of

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2 THE COURT: I don't think Mr. Bogdanos  
3 is saying there was.

4 MR. BOGDANOS: Absolutely true, I agree.

5 MR. ROSS: No, no, I understand that.  
6 So that to the extent that your Honor would  
7 be considering that as an aspect to an  
8 increased punishment, here, I would suggest  
9 to the contrary.

10 THE COURT: I wouldn't. I wouldn't,  
11 but certainly, I have to consider all the  
12 other factors, and some of them are more  
13 serious than others, obviously.

14 And again, I think I understand the  
15 positions of both sides, that you are looking  
16 for a sentence in a certain neighborhood, and  
17 Mr. Bogdanos is advocating a much longer  
18 sentence.

19 MR. ROSS: Yes.

20 THE COURT: And I am not going to  
21 commit myself to a number, I am not going to  
22 do it.

23 What I would do is, I would consider  
24 everyone's position. And I could tell you,  
25 certainly, this is an odd thing to say, that

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1  
2 should he go to trial and be convicted, he  
3 would get a significantly longer sentence if  
4 he's convicted of Attempted Murder or Assault  
5 in the First Degree, than he would on the  
6 plea.

7 MR. ROSS: Yes.

8 Judge, may I make one request of  
9 your Honor?

10 THE COURT: Yes.

11 MR. ROSS: And that is, that today is  
12 the first day that we have had access to  
13 Dr. Vingiano's final report, so may I ask  
14 your Honor to review that?

15 THE COURT: I will do it this  
16 afternoon.

17 MR. ROSS: And to see if, on reading  
18 that and reflecting on my remarks today on  
19 the record, whether or not you could make or  
20 extend a sentence commitment?

21 THE COURT: I don't know if this case  
22 is going to be resolved that way, it might  
23 not be. It might be where I say, because we  
24 are on the eve of trial, that I might say,  
25 you will make all of this known to me on the

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1 sentence date, everything that you want to  
2 say or everything you want to submit, and so  
3 will Mr. Bogdanos, and I'll make a decision.  
4 It might be a situation like that, where the  
5 defendant has to make a choice on how he  
6 wants to proceed. Of course, it will be  
7 significantly worse should he go to trial and  
8 stand before me convicted of these crimes.  
9

10 MR. ROSS: I understand.

11 THE COURT: Significantly worse, as far  
12 as he goes, on position of sentencing then.

13 Should he admit his guilt freely and  
14 openly, I would certainly take that into  
15 consideration, along with everything else,  
16 and give him what I would consider a lesser  
17 sentence, certainly, than should he be  
18 convicted.

19 MR. ROSS: Thank you, judge.

20 THE COURT: Let's come back on  
21 Wednesday at 2:15. And counsel, I am  
22 speaking to everybody at the defense table,  
23 this case is going forward Wednesday at  
24 2:15. Either we will have the hearing or it  
25 will be a disposition.

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Senior Court Reporter

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1  
2 If there is a hearing on Wednesday, you  
3 should be able to complete it Wednesday  
4 afternoon, and then the schedule is for jury  
5 selection on Thursday. There are no other  
6 commitments here. I don't want to be calling  
7 other judges, having to page you or calling  
8 cell phones, having to find people. Everyone  
9 should be here at 2:15 on Wednesday.

10 Mr. Mure?

11 MR. MURE: I will be here, judge,  
12 hopefully in the capacity of assisting  
13 Mr. Ross. That is what my position is.

14 THE COURT: Whatever capacity, everyone  
15 is welcome at the counsel table. Mr. Florio  
16 will be well represented, certainly, and we  
17 will proceed on Wednesday the 9th at 2:15.

18 MR. BOGDANOS: Thank you, judge.

19 MR. ROSS: Thank you.

20 \*\*\*\*\*  
21  
22  
23  
24



## Proceedings

## REPORTER'S CERTIFICATION

Certified to be a true and accurate  
transcript of the original stenographic  
notes.

2-8-00

Dated

Denise M. Huntington

DENISE M. HUNTINGTON, RPR, CSR  
SENIOR COURT REPORTER

Denise M. Huntington, RPR, CSR  
Senior Court Reporter

APPENDIX, E, (1)

①

4/23/09

Supreme Court, Appellate Division  
First Department  
Departmental Disciplinary Committee  
61 Broad-WAY  
New York, N.Y. 10006  
Joel Peterson Legal Assistant  
RE: Docket NO. 2009.0467

#00A5699  
Dominick Florio  
Attica Corr. Fac  
Box/49  
Attica N.Y. 14011-0149

To Disciplinary Committee,

This letter is in response to the above Complaint number.  
A.D.A. MR. Bogdanos submitted a response brief to my Complaint.  
This Complainant disagrees with MR. Bogdanos Brief response. The  
point this Complainant would like to bring to this Committee's attention  
are as following:

1. On the A.D.A appearance documents this documents  
appears to be Suspect. A.D.A. Exhibit A,

See line 13, Date on cal. 1/25/00 A.D.A. Scoppetta. Mr. Scoppetta ask  
for a adjournment, because A.D.A. Bogdanos is on military duty.  
The case gets adjourned to 2/9/00. See Remark Section. If you look  
at this document and go to line 15 of the cal Date you see someone crossed  
out that 2/9/00 date. Someone also put by the remark section advanced to  
2/7/ 2:15. Now line 16 date on cal. Remarks state the following: PR. D  
tries to fire DC. Chuck Ross, but takes DC Joe more as legal adviser.  
Adjourned to 2/9/00 2:15 For H/R.

On 2/9 ~~at~~ Mr. Bogdanos appearance sheet states remarks Section: All  
defense motions denied no jurors available Adjourned to 2/14 for jury selection.

This Complainant would like to bring to this Committee's attention

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This defendant hates to say this document Mr. Bogdanos submitted to this Committee is a fraud. I would ask this Committee to obtain the original docket appearance sheet from the D.A.'s offices and it will prove someone added to that document. I also would ask this Committee to summarily dismiss A.D.A. Bogdanos response brief because once again misconduct was committed. How in the world this A.D.A. did not log in the February 10, 2000 Sandoral hearing. What I think happen here someone duplicated this docket document and changed the date and remark section because it just don't add up.

I wish to put on this record for the past 9½ year I never would have known about this February 7, 2000 Court appearance. This date was hidden from me and my appellate Counselor for the past 9½ years. I wish to put into this record ~~that~~ someone in the Court office filing room blanked out ~~in~~ the Court appearance docket sheet, the date of February 7, 2000. I would ask this Committee to get a copy of all persons that signed for access to those files. In my 440.10 and on my direct appeal this February 7 2000 appearance would of proved all my claims of ineffective assistance of trial Counsel if it was provided to me and my appellate Counselor.

2. A.D.A. Brodanos state on his response brief page 7.

"The psychiatric defense was discussed by Counsel on the record, looking at exhibit B, I would like to bring to the Committees attention a few facts I want to add. A.D.A. Bogdanos still does not prove from these minutes that he had such a Conversation; which defense first considered and then decided against raising any psychiatric defense. Mr. Bogdanos states this Conversation was a side bar. In those minutes you dont see anyone asking for a side bar. To make my point Very Clear that that Conversation never took place in the present of the defendant the individual defendant name is —

②

Clearly and I mean Clearly Shows that the Judge, the defendants and the defendants new attorney were not part of that conversation. (See Exhibit B, page 15 of ADA Response brief to Florio's Complaints)

So what we can see from this new evidence Mr. Bogdanos submitted was a private conversation he had with Mr. Ross about discussing my defense, not only did Mr. Bogdanos ~~engage~~ in misconduct about motion practice off the record, Mr. Ross as well went over with the ADA about my defense. I will be filing disciplinary action on Mr. Ross, as well in the future. I now know why these minutes were hidden from me for the past 9½ years. Because my defense attorney was having private meeting about the case with Mr. Bogdanos. ~~See~~ Exhibit B. Joseph Mure affidavit. Mr. Mure never even seen the psychiatric report. This Complainant finds it strange that Mr. Bogdanos never contacted Mr. Ross about this Complaint and get an affidavit in support his claim. I would like this Committee to contact Defense Counsel Charles Ross and get a statement from him. of the off the record side bar about discussing the defendants defense options.

3. On Bogdanos response to Complaint Procedural History Section P.6. Once again Mr. Bogdanos is mistating his own facts on this new brief. He now Chosen to add to that procedural history of facts, "The Court appointed the defendant a second defense attorney due to the defendants hostile relationship with Counsel" I wish he put this on his Response motion to defendants 440.10 the first time. So once again Mr. Bogdanos is misrepresenting his own statement of facts. (See exhibit B) of original Complaint the defendant filed to this Committee. I also would like this committee to please take note that ADA Bogdanos is still trying to cloud the facts, by stating [the Court appointed a second attorney] Both attorney's were retained by the defendants family.

4

4. Also this Complainant would like to amend this Complaint with a Brady/Rosario Violation Committed by A.D.A. Bogdanos. Mr Bogdanos State on his response brief that he has extensive training on Brady/Rosario issues.

I would like show this Committee Mr Bogdanos once again Committed misconduct. ADA Bogdanos withheld 2 pieces of evidence on the Discovery Sheet. 1. Is a 911 Tape made February 7, 1999 and 2. Medical Aided Card. This A.D.A handed over this copy of the Discovery list Mark Exhibit C. If you look at the Section Where it states 911 Tape its blank out also blanked out is the medical Aided Card. I have obtained an original Copy from the Court and if you look a the Section where the 911 Tape, there is a check there, Also there is a check by the Aided Card. (See exhibit C, (2) on the peoples voluntary Disclosure Form on P. 6. There is a Check mark by Tapes and electronic Recordings<sup>(1)</sup>. There seems to be a problem with Someone blanking out Court documents from Court appearances to Brady/Rosario material.

(1 Exhibit D, Voluntary Disclosure form)

I Dominick Florio ask this Committee to look into these matters of misconduct by ADA Matthew Bogdanos. I am doing 15 years for a bar fight. It was my first felony and I did not receive a fair trial. Do to Mr. Bogdanos misconduct and my defense attorney Charles Ross which I am filing a Complaint in the future with this Committee.

January 5, 2009

EASTERN NY CORR. FAC.

Box 338

Napanoch NY 12458

Dominick Florio #00A5699

Appellate Division

First Department

RE: People v. Florio #6115-99 (603. Conduct of Attorney)  
603.4 sub 2 (c), (3) (e) (1) (i) (ii). IN Violation of Rules DR1-102  
1200.3.(A) 1, 3, 4, 5.

Complaint Department,

This Complaint is in reference to District Attorney Matthew  
Bogdanos, One Hogan place New York, New York 10013

The herein defendant filed a motion to vacate on 4/21/08  
C.P.L 440.10 Hon. C. Solomon Supreme Court of the State of New York  
County of New York 100 Centre Street New York NY 10013. ON Claiming  
ineffective assistance of trial Counsel for Counsel's failure to raise  
an intoxication defense and mental defect in behalf of this defendant,  
Just to mention a few.

The people in response filed a memorandum of law on October 3,  
2008, by Matthew Bogdanos. Consequently, I filed a reply to respondents  
opposition to his motion. (Exhibit B) The Particular Claims raised by  
the people Challenging my motion to vacate were, (that defendant's claims  
are procedurally barred), factually inaccurate and legally unsupported.

A Prosecutor should not knowingly offer false evidence. ABA Code of Professional Responsibility. DR1-102 1200.3.(A) 1,3,4,5.

Looking further into this matter, and then consulting with my attorney MR. Joseph Corozzo 260 Madison Ave New York NY, and after going over Mr. Bogdanos brief. We made a decision to contact the attorney in question Joseph Mure and inquire from him about the February 7, 2000 date mentioned in the prosecution response in opposition to defendant's motion to vacate, and any possible conversation Mr. Mure had with the leading defense attorney Charles Ross regarding that particular date. Afterward, we decided to send Mr. Mure, a sum of questions so he can answer them in his own words. (See Exhibit D)

Mr. Mure in his integrity and ethical obligation responded to said letter and provided the attached in response to the question presented by defendant in his own hand writing on defendant's letter. (See Exhibit D) This letter came on December 11, from the office of Joseph Mure JR / Associates 26 Court Street Brooklyn NY.

Mr. Bogdanos the District Attorney stated under oath and on the record that my leading defense attorney and Attorney Joseph Mure had a conversation in front of him and on the record on Feb 7, 2000 where my attorney's considered and then decided against raising any psychiatric defense. Enclosed is the questionnaire letter sent to Joseph Mure dated November 22, 2008 asking if, and when this conversation took place. (Exhibit C)

Mr. Mure's statement clearly supports my argument that no such conversation took place on such date (See Exhibit C, D) District Attorney Bogdanos knowingly offered false evidence in his opposition brief. Placing himself under oath on the record for which I am officially filing disciplinary proceedings for



psychiatric report, never mind discussing and psychiatric defense.

He stated and "quote";

Question: "MR. Mure did you and MR. Ross discussed any trial strategy for my defense?"

Answer: "At first there was no trial strategy then we discussed self defense". (See Exhibit D)

MR. Bogdanos is blatantly committing willful misconduct and an attempt to persuade the court by using deceit, dishonesty and reprehensible methods of misconduct committed voluntarily and intentionally. In Violation ABA Codes DR 1-102 1203.3, 1,3,4,5, I would like the Complaint board to please look into this matter of misconduct.

Thank You!

Dominick Florio



Duly Sworn before me

This 2<sup>nd</sup> day of January ~~2008~~ <sup>2009</sup>



NOTARY PUBLIC

Notary Public State of New York

Thomas J. Briggs

ID# 01BR6137871

My Appointment Expires 12/05/2009

# APPENDIX F. (1)

Supreme Court Of The State of New York

APPELLATE Division First Department x

THE PEOPLE OF THE STATE OF New York

RESPONDENT

- against -

DOMINICK FLORIO

DEFENDENT x

NOTICE OF MOTION

FOR APPLICATION

FOR LEAVE TO APPEAL

PURSUANT C.P.L. 460.15

45 D.15

Indictment # 6115/99

PLEASE TAKE NOTICE, that the above named defendant/Appellant will move this Court for an application before Appellate Division First Department, appointed Honorable presiding Justice, for the Supreme Court, on April 20, 2009 at 10:00 o'clock in the forenoon of that day, for a certificate pursuant to Section 460.15 of Criminal Procedure Law. Defendant is requesting permission certifying that this case involves a question of law and facts which ought to be reviewed by the Appellate Division: First Department, Appellant Term: From the decision and order rendered on February 24, 2009, order by the Supreme Court, New York County (Charles J. Solomon,) denying Defendant's motion to **RENEW** C.P.L.R. 2221:9 Submitted on January 21<sup>st</sup> 2009, and affirmed the judgment convicting the Defendant of a Class B felony of Assault in the first degree one count. Sentencing the Defendant to a 15 year determinate prison sentence at a New York State prison.

No previous application has been made on the above caption matter to this Court, From this decision and order rendered on February 24, 2009, motion to RENEW C.P.L.R. 2221:9. Please be advised this motion to renew the Defendant filed, was from a motion to vacate judgment pursuant to 440.10, and this Defendant filed for a leave for permission to appeal from a decision and order on January 9, 2009. This Defendant needs to file this leave for permission for grant to appeal to this Court, because he wants to persevere the issues on the motion to Renew. And this is the right procedure to do so. The reason the Defendant filed a motion to Renew, the Defendant received two affidavits in support of his claims of ineffective assistance of trial counsel. These two affidavits [also] supports the Defendant's claim the People submitted false perjured testimony into evidence. See exhibit motion to Renew, B, Amend Renew B.2.

2221.(e) 3. A motion for leave to Renew, shall be based upon new facts/evidence. Shall contain reasonable justification for failure to present such facts on the prior motion.

The Defendant would like this Courts permission Granting a leave application for leave to appeal Pursuant C.P.L. 460.15.

Submitting the motion to Renew 2221.9, was based upon facts, that was not offered in Defendants prior motion to vacate, if so it would have changed the prior decision, denying the Defendants motion to vacate judgment Pursuant to 440.10 (See exhibit A)

1. The premise of this Appeal is while defendant was awaiting for the decision of his pending motion to vacate, he consulted the services of attorney Joseph Corozzo 260 Madison Ave, New York, N.Y. and after going over ADA Bogdanos brief. This attorney suggested to contact trial Counsel Joseph Mure and inquire from him about the February 7, 2000 date in question. The Defendant then took some time to locate the Court appearance list and such date does not appear to indicate the Defendant and his two trial Counsels were present on February 7, 2000. See motion to Renew exhibit B

The A.D.A. Bogdanos submitted under oath and on the record on their Response brief that, "On February 7, 2000 after a lengthy and thorough motion practice in which defense first considered and then decided against raising any psychiatric defenses" Then the court appointed the Defendant a second trial attorney. (See exhibit C, A.D.A. Response motion)

This evidence submitted by Mr. Bogdanos was known to be false. Defendant bring this to the Courts attention when he submitted the motion to Renew 2221.9 C.P.L.R. exhibit B,

440.10 motion to Vacate Facts

Defendant filed on April, 21, 2008. Notice of motion to Vacate judgment pursuant to Criminal Procedure Law 440.10 (f)(9)(h), In the Supreme Court of the State of New York, New York County; Criminal Term located at 111 Centre street, New York, New York 10013. (Defendant raised the following issues of ineffective assistance of Counsel). (See exhibit A)

1. Defense counsel failed to investigate and present evidence of defendant's mental disease/defect at the time of incident; Which denied his Due process right; mental disease or defect is a affirmative defense in a Criminal Case, and his failure to produce such evidence, which could have been used to impeach Complainants testimony at trial of his own actions at the time of the incident. Defendant's mental disease/defect Substantially "negates intent" for criminal responsibility as a result of mental disease/defect lacked Substantial Culpability to properly appreciate his actions, conduct and the consequences at the moment of the occurrence of the crime. Defense attorney failed to call expert witness DR. William Vingiano Ph.D. hired by the defendant, to testify about the defendant's profile Characteristic of psychotic symptomatology, impulsivity and poor judgment; Failing to present into evidence a report done by Kings County Hospital diagnosing defendant with (Bipolar Type I manic episode, Psychotic R/o schizophrenic disorder).

2. Evidence of intoxication, Sufficiently warrant instructions on intoxication defense, where defendant's mental Culpability has been diminished by intoxicant for a reasonable person to entertain doubt as to the elements of intent. (See exhibit A)

The above underlined Claims are in Violation of the defendant's rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution, and those rights under Article I Section 6 of the New York Constitution, also in violation of defendant's Due process right and Equal protection guarantees, which extremely prejudiced and prevented the defendant from obtaining a fair trial.

This evidence was never presented at trial by defense counsel, nor did the jury had an opportunity to view the same.

3. (Question of facts and law, which ought to be reviewed)

The Defendant seeks this Court's review and permission for a Certificate to leave to appeal the decision and order rendered February 25, 2009, Denying the Defendants motion to Renew CPLR 2221:9 See exhibit B(1)

This decision was rendered by Hon. Charles Solomon was based on evidence that was knowingly to be false. This evidence was presented by on A.D.A. Matthew Bogdanos on the people's response brief dated October 3, 2008. In their memorandum of law in response to the Defendants motion to Vacate C.P.L. 440.10 (see exhibit C.)

A.D.A. Bogdanos knowingly offered to the Court false perjured evidence in violation of A.B.A. Code of Professional Responsibility DR-7-10.2 (A)(4)(5)(8) DR-7(8)(e) P.L. 210.45, 210.40, Perjury And Related offenses

Peoples Memorandum of Law

Section 6. (Procedural History) That on February 7, 2000 after a lengthy and thorough motion practice, (in which the defense first considered and then decided against raising any psychiatric defense); the Court appointed the defendant a Second defense attorney. see exhibit C

And the Defendants claims are procedurally barred, factually inaccurate and legally unsupported. Section 4,

2221(e) C.P.L.R. Facts of the Defendants Case: (Amend motion to Renew Enclosed)

Letter dated January 30, 2009 by defense attorney Joseph Mure JR.  
26 Court Street Brooklyn NY 11242. RE: People V. Florio Indictment # 6115/99

Dear Mr. Florio

As you are aware, I was one of the attorneys retained to represent you in your Attempted murder trial before Hon. Charles Solomon in Part 82 of New York County,

Your initial attorney of record was Chuck Ross. When I joined your defense team, the day before your trial was scheduled to commence, it appeared that yourself and Mr. Ross were having difficulty communicating with one another.

Upon being formally retained, we requested an adjournment for purposes of my being provided a adequate opportunity to bring myself up to date regarding the specifics of your case in furtherance of our objective that I play a significant role alongside Mr. Ross in your defense. Judge Solomon denied this request.

Inasmuch as I was not provided sufficient time to act in the role of lead Counsel, Mr. Ross maintained that role throughout trial. I reviewed evidence on your behalf and attempted to assist Mr. Ross as his second to the best of my abilities given the circumstances. I did not interview any witnesses at the trial (nor was I provided the opportunity to review your medical records.)

My role was thus very limited to assisting in the formulation of a trial strategy and acting as an intermediary between yourself and Mr. Ross given the apparent breakdown in your respective lines of communication. See motion to Renew Amend B, (3)

This Statement and response by Mr. Mure clearly supports ineffective assistance of trial Counsel in its entirety, which is the core of defendant's motion to vacate. Also Mr. Mure Statement clearly supports my Renew motion that (No mental defense was ever discussed). Mr. Bogdanos knowingly offered false evidence in his opposition brief. Placing himself under oath on the record while introducing false statements. See motion to Renew P. 7, sub 14, exhibit B, (5) Before Mr. Mure sent this letter to the defendant. Defendant consulted with his new defense attorney about the February 7, 2000 Court

appearance cited by the people. Defendant looking through his legal files found the Court appearance sheet and that February 7 2000 date does not exist. See Renew motion exhibit B, exhibit Section B,

2221(e)(3) Afterward the defendant decided with his new attorney to contact attorney Joseph Mure, and inquire of any conversation that he had with the leading defense attorney Charles Ross, and A DA Bogdanos, about not raising a psychiatric defense on that particular date of February 7, 2000.

Afterward the Defendant decided to submit to Mr. Mure a series of questions in writing regarding the conversation on the above date.

Mr. Mure in his integrity and ethical obligation responded to said letter on December 11, 2008, and provided in his response to the questions presented by defendant, in his own handwriting on defendant's letter.

This letter was the reason why the defendant filed a motion to Renew 2221:9(e)(3)

The timing of this letter was sent a couple of weeks before the court

made their decision which denied the defendant's motion to vacate, on December 23, 2008.

The defendant brought forth to attorney Mure six questions indicated in the ~~enc~~ enclosed exhibits to which he responded as follows:

1) In what capacity were you hired in my case?

A) At first your family wanted me to take over the case two days before trial.

2) Did you have adequate time to prepare for my case?

A) I told them that I could not prepare for trial in two days. No I did not have adequate time to prepare for your case, that's why I did not try it.

3) Did you go over all discovery materials?

A) As to discovery, I believe I read thru everything given to me.

4) Did you interview any of the witnesses that testified?

A) I did not interview any witnesses that testified.

5) What trial strategy did you and Mr. Ross discussed for my defense?

A) At first there was no trial strategy then we discussed self defense.

6) Did you ever see any medical records on my behalf by Doctor William Vingiano Ph.D Report, and Kings County Hospital Report that was hired by Florio family?



A) I don't believe, any medical records were provide to me.

(See Renew B exhibit A)

The timing of which this evidence was obtained. 2221. (e) (3)

Do to the decision ~~rendered~~ on December 23, 2008, The Defendant Florio was going to have attorney Joseph Corozzo make a request to the Court in order to amend defendant's motion to vacate. Due to the time this newly discovered evidence was obtained. Defendant's time limitation, it was impossible to do this, because the court had already made a decision on this matter. Carriage House Realty CO. V. Conlon 493 NYS2d 687 (city ct. 1985) (See Renew / Amend Renew)

The only way the Defendant Can bring this newly discovered evidence to the Courts attention was filing a motion to Renew 2221:9. Which the Court denied without an opinion. (See exhibit B, 1, 2)

This intentional Submission of false statements by the people in this case is an affront to the Courts authority, and a disregard to New York State Laws, ABA Criminal Standerds § 3-5.6 (a) ABA Professional Standards and the U.S Constitution. (Prosecution should not knowingly offer false evidence). ABA Code of Professional Responsibility DR-7-102 (A)(4)(5)(6) DR-7-102 (B)(2). The prosecution in their opposition brief made (false) sworn allegation to the facts introduced in their opposition to Defendants motion to Vacate 440.10 C.P.L. (When they alleged that on mentioned date;). (i.e. February 7, 2000). Defense Counsel opted not to introduce a psychiatric defense, in the defendants behalf. see exhibit C.

The Defendant prove that the A.D.A Submitted this false statement with the affidavits in support sent by defense attorney Joseph Mure.

(EXHIBIT Both decisions and order)

4. Decision and order dated December 23, 2008 received by the defendant on January 12, 2009. The Court based their decision on the following:  
Defendant did not raise the issue of ineffective assistance of trial Counsel on his direct appeal and he is procedurally barred from collaterally attacking his conviction in a motion pursuant to 44 NY People v. Pedraza 56 A.D. 390 (1st Dept 2008)

Note: The Court does not cite any trial page transcript, nor does the A.D.A. on his Response brief to get the Defendant procedurally barred. (See exhibit C) The facts of the matter is all the issues the Defendant raised, not one of them were part of the trial record. That's why they did not cite anything on the brief and decision and order. The only evidence that they claim was "on the record" was the February 7 date that was false to say the least.

In People v. SHIELDS Jr 800 NYS2d 584, Defendant was entitled to a hearing on postconviction motion in which he asserted claim of ineffective assistance. Affidavit supporting claim involved matters which did not appear on the record.

Also on the Court's decision and order, they do not mention any law on the claims Defendant make of not calling to testify an expert witness Dr. William Vingiano to testify to the mental state of the Defendant psychiatric profile. (See exhibit B(2) Also motion to vacate exhibit A.)

Appellate Division, held that issues of whether trial Counsel's omission to present psychiatric testimony in support of insanity defense amounted to ineffective assistance, (could not be resolved on affidavits upon motion to vacate), but rather a hearing was required. (People v. Smith 391 AD2d 471 A.D. 1 Dept 2003) (People v. NAU 800 NYS2d 585 2d Dept 2005)

Defendant's Renew

Decision and Order Page 4

5. To the extent that Defendant Complains about matters outside the record, his motion is deficient in that it offers only his own self-serving after-the-facts affidavits and does not include an affidavit from trial Counsel. See People v. Rogers (8AD3d 888, 3<sup>d</sup> Dept 2004) Additionally, the defendant does not offer any explanation for his failure to include such affidavit. (People v. Morales 58 NYS2d 1008, 1993) (People v. Stewart, 295 AD2d 249, 1<sup>st</sup> Dept 2002) 99 NY2d 540, cert denied 538 U.S. 1003.

The Defendant on his motion to Renew 2221:9 Proves both Case law the people cite Stewarts, and Rogers By Submitting two affidavits by defense attorney Joseph Mure. The Court Chosen not to write an opinion on the motion to Renew. It was well settled that all the case law cited by the Court and the people are moot in light of this newly discovered evidence the Defendant presents to this court. (see exhibit B, 1, 3)

The Defendant make this claim, that the Courts decision and order was based on false evidence. Hon Charles Solomon on December 23, 2008 and February 25, 2009 did not reneeder these decision based on law or facts in the case. Further more he sided with the A.D.A with his false perjured evidence. The Court does not cite any trial minutes to fight the Defendants claims. exhibit B, (2) ADA does not cite any trial minutes on their brief to support the motion. And the Court seen it fit to affirm the conviction with (no evidence).

Dominick Florio, the defendant in the above entitled Captioned matter acting pro se, hereby affirms the following to be true under penalty of Perjury.

Wherefore it is respectfully request this Court to ~~take~~<sup>take</sup> this motion that was denied on February 25, 2009 motion to Renew, ~~with the motion that was denied on February 25, 2009~~ for permission for Grant for a leave to appeal. Requesting your Honorable permission to leave to appear to this Court.

DANIEL J. DAREL  
NOTARY PUBLIC, STATE OF NEW YORK  
CERTIFIED IN ERIE COUNTY  
MY COMMISSION EXPIRES 10/29/12  
REGISTRATION NO. 01DA6194226

Appear to, before me  
To 9<sup>th</sup> day of March 2009

NOTARY PUBLIC

Respectfully Submitted

Dominick Florio

Supreme Court of The State  
of New York, Appellate Division  
First Department

THE PEOPLE OF THE STATE OF  
NEW YORK.

Plaintiffs - Respondents

- against -

Appellant

Dominick Florio

AFFIDAVIT OF SERVICE

Indictment NO. 6115/99

New York County

Dominick Florio herein duly sworn and deposes and says:

That I have forwarded a true copy of the enclosed, Notice of Application permission Granting Certificate for leave to Appeal to the Appellate Division First Department. Please take notice that 1 Copy of the inclosed documents indicated above was placed into a sealed envelopes and simultaneously deposited in the mail box at Collins Corr Fac P.O. Box 340 Collins, New York 14034 and forwarded via United States Postal Services on the 18 day of March 2009 to the below listed parties. Statements made herein are punishable by law under Penalty of perjury.

Supreme Court of the State  
of New York, County of New  
York, Criminal Term  
111 Centre Street

New York, N.Y. 10013

Robert M. Morgenthau

New York County

District Attorney

One Hogan place

New York, NY 10013

DANIEL J. DAREL  
NOTARY PUBLIC, STATE OF NEW YORK  
CERTIFIED IN ERIE COUNTY  
MY COMMISSION EXPIRES 10/29/12  
REGISTRATION NO. 01DA6194226

Duly Sworn before me  
The 9th day of March 2009

Daniel J. Darel x  
NOTARY PUBLIC

Respectfully Submitted

Dominick Florio x  
Dominick Florio

F.(1)

Supreme Court of the State of New York  
Appellate Division - First Department  
27 Madison Avenue  
New York, N.Y. 10010  
(212) 340-0400

April 28, 2009

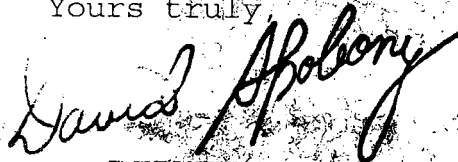
Dominick Florio(00-A-5699)  
Attica Corr. Fac.  
Box 149  
Attica, N.Y. 14011-0149

Re: People v. Dominick Florio  
Ind. #6115/99, M-1957

Dear Mr. Florio:

This is in response to your letter dated April 23, 2009.  
The above-listed motion for Certificate (M-1957) has a calendar  
date of May 28, 2009.

Yours truly,

A handwritten signature in black ink, appearing to read "David Spokony", is written over a circular embossed seal.

**DEPUTY CLERK**

David Spokony

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : FIRST DEPARTMENT

**COPY to D. Florio**  
SUPREME COURT APPELLATE DIVISION  
FIRST DEPARTMENT

BEFORE: Hon. Richard T. Andrias,  
Associate Justice

-----X  
The People of the State of New York, 8/5/09

M-1957

Ind. No. 6115/99

-against-

CERTIFICATE  
DENYING LEAVE

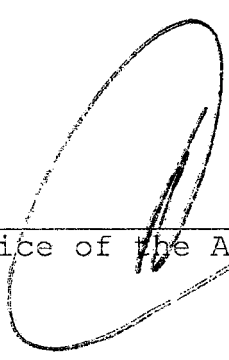
Dominick Florio,

Defendant.

-----X  
I, Richard T. Andrias, a Justice of the Appellate Division,  
First Judicial Department, do hereby certify that, upon  
application timely made by the above-named defendant for a  
certificate pursuant to Criminal Procedure Law Section 460.15,  
and upon the record and proceedings herein, there is no question  
of law or fact presented which ought to be reviewed by the  
Appellate Division, First Judicial Department, and permission to  
appeal from the Order of the Supreme Court, New York County,  
(Charles Solomon, J.), entered on or about February 24, 2009,  
which denied defendant's motion to renew his prior motion  
pursuant to CPL 440.10, is hereby denied.

Dated: New York, New York  
June 11, 2009

ENTERED JUN 18 2009

  
Justice of the Appellate Division

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Dominick Florio

(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

- against -

Andrew Cuomo

Attorney General

State of New York

10 Civ. 998 (SJS) (JLC)

AFFIRMATION OF SERVICE

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

I, Dominick Florio  
(name)

declare under penalty of perjury that I have

served a copy of the attached

Order to Show Cause  
(document you are serving)

upon

Andrew Cuomo  
(name of person served)

whose address is

120

Broadway New York NY 10271  
(where you served document)

by

U.S. Postal mail

(how you served document: For example - personal delivery, mail, overnight express, etc.)

Dated:

Albica

(town/city)

NY  
(state)

March 29

(month)

2010

(day) (year)

Signature

Address

Box 149

City, State

Albica NY

Zip Code

14011-0149

Telephone Number

RECEIVED  
CLERK OF COURT  
2010 APR -2 11:25